

EASEMENT AGREEMENT INCLUDING PETITION AND WAIVER

This Agreement is made and entered into by and between the City of Ankeny, Iowa (hereinafter "City") and the undersigned, Des Moines Area Community College Foundation (hereinafter "DMACC").

WHEREAS, the City of Ankeny Zoning Board of Adjustment approved a Special Use Permit at their regular meeting on April 6, 2010, allowing DMACC to construct a small wind energy conversion system at approximately 130 feet in height, on their property at 2006 S. Ankeny Boulevard / 2550 S. Ankeny Boulevard, Ankeny, Iowa, and legally described on Exhibit "A"; and,

WHEREAS, the Zoning Board of Adjustment approved the Special Use Permit with the following conditions:

1. The applicant shall obtain all necessary permits and approvals prior to construction including, but not limited to, approval from the FAA and shall submit copies of those approvals to the City.
2. The surface of the small wind energy conversion system shall be non-reflective.
3. The applicant shall submit a copy of an executed interconnection agreement to the City prior to the issuance of building permits.
4. The applicant shall submit a copy of a minimum \$2,000,000 liability insurance to the City.
5. The applicant shall record a petition and waiver agreement which will run with the land and will grant permission to the City of Ankeny to enter the property to remove the SWECS pursuant to the terms of approval and to assure compliance with the other conditions set forth in the Special Use Permit. The petition and waiver shall also identify that removal shall be at the expense of the owner/operator and the cost may be assessed against the property.

WHEREAS, this Easement Agreement including Petition and Waiver is created to comply with the previously shown condition of approval 5 above; and,

WHEREAS, the City may need to enter the property owned by DMACC to remove the small wind energy system pursuant to the terms of approval and to assure compliance with the other conditions set forth in the Special Use Permit.

NOW, THEREFORE, BE IT AGREED BETWEEN THE PARTIES HERETO AS FOLLOWS:

The undersigned DMACC hereby authorizes the City to enter said property, addressed at 2006 S. Ankeny Boulevard / 2550 S. Ankeny Boulevard, if, after due notice to DMACC, the City has cause to believe that the small wind energy conversion system has been nonfunctional for a continuous period of six (6) months or if the site is out of compliance with other conditions set forth in the Special Use Permit.

If removal of the tower and appurtenant facilities is required, the City shall notify DMACC. Removal shall be within six (6) months of written notice to remove being provided to DMACC by the City. Any associated cost shall be at the expense of DMACC and the cost may be assessed against the property. In consideration of the granting of the Special Use Permit, DMACC hereby waives all legal formalities of whatsoever kind or character required by the laws of Iowa to be observed by cities where such expense is to be assessed property. DMACC hereby expressly waives each and every question of jurisdiction, the intention of DMACC being to authorize and direct said City to remove the small wind energy conversion system without requiring any of the formalities or legal proceedings required of cities by the statutes of Iowa.

DMACC agrees that this Petition and Waiver shall be effective and binding from and after the approval hereof by resolution of the City Council and shall be binding on any and all subsequent titleholders, transferees and assignees.

Dated this _____ day of _____, 2010.

Presented to the City Council on _____, 2010.

Approved by the City on Council on _____, 2010.

City of Ankeny, Iowa

ATTEST:

By: _____
Steven D. Van Oort, Mayor

By: _____
Pamela DeMouth, City Clerk

STATE OF IOWA, POLK COUNTY, ss:

On this _____ day of _____, 2010, before me the undersigned, a Notary Public in and for the State of Iowa, personally appeared **Steven D. Van Oort** and **Pamela DeMouth**, to me personally known, who, being by me duly sworn, did say that they are the Mayor

and City Clerk, respectively, of the **City of Ankeny, Iowa**; that the seal affixed to the foregoing instrument to which this is attached is the corporate seal of the City; that the instrument was signed and sealed on behalf of the City by authority of its City Council, as contained in Ordinance Resolution No. _____ passed by resolution of the City Council under Roll Call No. _____ of the City Council on the _____ day of _____, 2010; and that **Steven D. Van Oort** and **Pamela DeMouth**, as such officers, acknowledged the execution of the instrument to be the voluntary act and deed of the City, by it and by them voluntarily executed.

Notary Public in and for the State of Iowa

**Des Moines Area Community College
Foundation:**

By: *Douglas C. Williams* By: _____

STATE OF IOWA, COUNTY OF POLK, ss:

On this 19th day of April, 2010, before me, a Notary Public in and for the said State, personally appeared Douglas Williams, to me personally known, who, being by me duly sworn, did say that that person is Vice President, Business Dev (_____ of executing member) of said limited liability company; that (the seal affixed to said instrument is the seal of said) or (no seal has been procured by the said) limited liability company and that said instrument was signed (and sealed) on behalf of the said limited liability company by authority of its managers and the said Carolyn Farlow, acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company by it voluntarily executed.



Carolyn D Farlow
Notary Public in and for said State of Iowa

LIENHOLDER'S NAME: _____

By: _____

By: _____

Signature-Title, if any

Date: _____

Witness: _____

EXHIBIT "A"

THE EAST 242.13 FEET OF THE SE 1/4 , SEC 27-80-24; AND LOTS 1 THRU 22 LYING
WEST OF HIGHWAY 69 AND NORTH OF ORALABOR ROAD